

ORDINANCE NO. 165

AN ORDINANCE REQUIRING FRANCHISEE TO PAY THE COSTS INCURRED BY THE TOWN OF MEAD, COLORADO, IN FRANCHISE NEGOTIATIONS.

WHEREAS, the Town of Mead is empowered to grant franchises to entities which propose to utilize streets and other public ways of the Town for their private benefit; and

WHEREAS, the negotiations of the terms and conditions of such franchise agreements are complicated and frequently require assistance from outside consultants; and

WHEREAS, such negotiations constitute a cost to the Town; and

WHEREAS, the costs incurred in such negotiations by the Town are a direct result of the desire of the franchisee to utilize in a permanent manner the streets and public ways of the Town for its benefit; and

WHEREAS, the Town is empowered to require applicants for franchise privileges to reimburse and hold the Town harmless from the costs associated with the application procedure; and

WHEREAS, such franchise negotiation costs are difficult to predict since franchise negotiations are infrequent and may involve the resolution of vastly different issues, depending upon the nature of the franchise sought.

NOW, THEREFORE, BE IT ORDAINED BY THE Board of Trustees of the Town of Mead, Colorado, that:

Section 1. Section 4, of Chapter 12, of the Code of the Town of Mead, Colorado is hereby adopted as follows:

"SECTION 4. PAYMENT OF FRANCHISE NEGOTIATION COSTS INCURRED BY THE TOWN.

12-4-1. During franchise negotiations the Town shall maintain an account of all expenses incurred, including, but not limited to staff personnel costs, including overtime, expert consulting fees, publishing fees, legal fees and other related expenses.

12-4-2. The Town shall bill the franchisee monthly for all expenses incurred related to the negotiation of the franchise. The amount billed to the franchisee shall include but not be limited to Town staff personnel costs, including overtime, expert consulting fees, publishing fees, legal fees, and other related expenses.

12-4-3. The franchisee shall pay to the Town all such expenses incurred within thirty days of the mailing of the bill, unless the franchisee protests the reasonableness of the costs in the manner set forth in subsection 4 of this Section. Failure to pay shall constitute a material breach of the negotiation process or the terms of the franchise. If a franchise has been awarded prior to a refusal to pay billed expenses, the Board may void the

franchise as provided in the franchise agreement. If a franchise has not been awarded prior to the refusal to pay billed expenses, the Town is under no obligation to resume negotiations until such payment is made.

12-4-4. If the franchisee disputes the reasonableness of the charges, it may seek review of the assessment by filing a protest with the Town Board within thirty (30) days of the mailing of the bill. The protest shall state the grounds on which the protest is based. The Town Clerk shall schedule the matter for public hearing before the Board on the next available Board agenda and notify the franchisee of the date and time for the hearing by certified mail, return receipt requested. Said hearing shall be for the purpose of hearing protest as to the reasonableness of the expenses incurred. At the hearing, the franchisee may present evidence regarding the reasonableness of the charges. The franchisee shall bear the burden of proof. At the hearing, the franchisee and the Town Staff shall have the opportunity to present evidence in the form of documents, exhibits and witnesses. The Board shall have all the powers to ensure a fair and efficient hearing, but shall not be bound by the Colorado Rules of Evidence. The hearing shall be open to the public. The Board of Trustees may approve the assessment or make modifications based upon the evidence presented. Any action by the Board shall be final and payment must be made within seven (7) days. Nonpayment shall constitute a material breach of the negotiation process or the terms of the franchise. If a franchise has been awarded prior to a refusal to pay billed expenses, the Board may void the franchise as provided in the franchise agreement. If a franchise has not been awarded prior to the refusal to pay billed expenses, the Town is under no obligation to resume negotiations until such payment is made.

12-4-5. Any entity challenging the validity, legality or constitutionality of this ordinance, if unsuccessful, shall reimburse the Town for all costs incurred, including attorneys' fees, in such litigation.

12-4-6. Recovery of Expenses. Notwithstanding any of the remedies contained herein, the Town Attorney, acting on behalf of the Board of Trustees, may institute appropriate action in a court of competent jurisdiction to recover reasonable expenses incurred by the Town in the negotiation of the franchise, including, but not limited to staff personnel costs, including overtime, expert consulting fees, publishing fees, legal fees, and other related expenses."

Section 2. Validity. The provisions of this ordinance are hereby declared to be severable and if any section, provision or part thereof shall be held unconstitutional or invalid, the remainder of this ordinance shall continue in full force and effect, it being the intent of the Board of Trustees that this ordinance would have been adopted even if such unconstitutional or invalid matter had not been included herein. It is further declared that if any section, provision or part of this ordinance or the application thereof to any person or circumstances, if held invalid, the remainder of this ordinance and the application thereof to other persons or circumstances shall not be affected thereby.

Section 3. Necessity. In the opinion of the Board of Trustees of the Town of Wellington, this ordinance is necessary for the preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Wellington.

Section 4. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF MEAD AND ORDERED PUBLISHED THIS 21st DAY OF Sept., 1988, AND ORDERED TO BECOME EFFECTIVE 30 DAYS FROM THE DATE OF ADOPTION.

PUBLISHED IN FULL IN "THE LONGMONT TIMES-CALL" ON THE 27th DAY OF September, 1988.

Harvey G. Potts
MAYOR
TOWN OF MEAD

ATTEST:

[Signature]
Town Clerk